L.M. Insulating Contractors, Inc., L.M. Insulating Contractors, Inc. d/b/a L.M. Insulating Contractors and Supply Company, Larry Minnifield d/b/a L.M. Insulating Contractors and Larry Minnifield d/b/a L.M. Insulation Supplies *and* International Association of Heat and Frost Insulators and Asbestos Workers Local 23, AFL–CIO. Cases 4–CA–21918 and 4–CA–22045

November 23, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

Upon charges and amended charges filed by International Association of Heat and Frost Insulators and Asbestos Workers Local 23, AFL–CIO (the Union) on July 23 and September 2 and 28, 1993, the General Counsel of the National Labor Relations Board issued a consolidated complaint on April 29, 1994, against L.M. Insulating Contractors, Inc., L.M. Insulating Contractors, Inc., d/b/a L.M. Insulating Contractors and Supply Company, Larry Minnifield d/b/a L.M. Insulating Contractors and Larry Minnifield d/b/a L.M. Insulation Supplies (the Respondents), alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served with copies of the charges and consolidated complaint, the Respondents failed to file an answer.

On July 18, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On July 25, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 22, 1994, notified the Respondents that unless an answer were received by July 8, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, L.M. Contractors, Inc. has been a Pennsylvania corporation engaged in the construction industry as an insulation contractor with a facility located in Harrisburg, Pennsylvania. On about December 5, 1991, L.M. Contractors, Inc. registered with the Commonwealth of Pennsylvania to conduct business under the fictitious name L.M. Insulating and Supply Company.

At all material times, Larry Minnifield, a sole proprietor, has been engaged in the construction industry as an insulation contractor with a facility located in Harrisburg, Pennsylvania. On about September 21, 1987, and October 16, 1990, respectively, Larry Minnifield registered with the Commonwealth of Pennsylvania to conduct business under the fictitious names L.M. Insulating Contractors and L.M. Insulation Supplies.

During the time period material here, L.M. Contractors, Inc. and/or Larry Minnifield as a sole proprietor have also done business as L.M. Insulating Contractors and Supply, Inc., L.M. Insulating Contractors, L.M. Insulating and Supplies, Inc., L.M. Insulation and Supply, Inc., L.M. Insulation Contractors, Inc., L&M Insulating Contractors and L.M. Insulating & Supply, Inc.

At all material times, L.M. Contractors, Inc., Larry Minnifield as a sole proprietor, and the other entities referred to above (Respondents) have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have administered a common labor policy; have shared common premises and facilities; have provided services for, and made sales to, each other; have interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise.

Based on the operations described above, the Respondents constitute a single integrated business enterprise and a single employer within the meaning of the Act.

During the 12-month period ending August 31, 1993, the Respondents, in conducting the business operations described above, provided services valued in excess of $50,000 for the McClure Company within the Commonwealth of Pennsylvania. The McClure Company, a Pennsylvania corporation, with an office and place of business in Harrisburg, Pennsylvania, is engaged in the construction industry as a mechanical contractor doing plumbing, heating, air-conditioning, and industrial process piping work.

During the 12-month period ending on August 31, 1993, the McClure Company purchased and received goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania and was directly engaged in interstate commerce.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

In about August 1990, the Respondents, employers engaged in the building and construction industry as described above, granted recognition to the Union as the exclusive collective-bargaining representative of a unit of the Respondents' employees (the unit), by entering into a collective-bargaining agreement (the agreement) with the Union for the period from August 1, 1990, to July 31, 1993, without regard to whether the majority status of the Union had ever been established under Section 9(a) of the Act. The unit described in article XII of the agreement has at all material times been appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. For the period from August 1, 1990, to July 31, 1993, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.[1]

Since about January 24, 1993, the Respondents have failed to continue in effect all the terms and conditions of the agreement by: (i) hiring employees not referred by the Union in violation of article VII of the agreement; (ii) failing to make payments to the Union Health and Welfare Fund, Pension Fund, Annuity Fund and Vacation Fund as required by article X of the agreement; and (iii) failing to participate in proceedings of the Trade Board and to comply with Trade Board decisions as required by article V of the agreement.

Although the terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining, the Respondents engaged in the conduct described above without the Union's consent.

On about April 19, 1993, the Respondents, by letter, withdrew their recognition of the Union as the limited exclusive collective-bargaining representative of the unit.

On about April 28, 1993, the Union requested that the Respondents furnish it with all payroll records for the period from April 1, 1990, through April 28, 1993, along with copies of all contracts or agreements for work entered into by the Respondents during the same period.

The information requested by the Union, is necessary for, and relevant to, the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit.

Since about April 28, 1993, the Respondents have failed and refused to furnish the Union with the information it requested.

CONCLUSION OF LAW

By the conduct described above, the Respondents have been failing and refusing to bargain collectively with the limited exclusive bargaining representative of their employees, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents have violated Section 8(a)(5) and (1) by failing since January 24, 1993, to continue in effect provisions contained in articles V, VII, and X of the agreement dealing with referrals from the Union, benefit fund payments, and Trade Board proceedings, we shall order the Respondents to honor those provisions of the agreement.

In accordance with our decision in *J. E. Brown Electric*, 315 NLRB No. 84 (issued today), we shall order the Respondent to offer immediate and full employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and to make them whole for any loss of earnings and other benefits they may have suffered by reason of the Respondent's failure to hire them. Backpay is to be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Reinstatement and backpay issues will be resolved by a factual inquiry at the compliance stage of the proceeding. *J. E. Brown Electric*, supra.[2]

Further, we shall order the Respondent to make whole its unit employees, and those employees who would have been referred, by making all delinquent fringe benefit fund contributions owed since January 24, 1993, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees, and those

[1] In the absence of any need to determine in this proceeding whether the parties' relationship is governed by Sec. 9 or 8(f), Member Browning would not reach that issue.

[2] For reasons stated in his concurring opinion in *J. E. Brown Electric*, Member Stephens would not include a reinstatement order.

employees who would have been referred, for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

In addition, having found that the Respondents unlawfully withdrew recognition from the Union on April 19, 1993, we shall order the Respondents to recognize the Union as the limited exclusive bargaining representative of the unit employees.

Finally, having found that the Respondents have unlawfully failed to furnish the Union information it requested on April 28, 1994, we shall order the Respondents to furnish the Union with the information requested.

ORDER

The National Labor Relations Board orders that the Respondents, L.M. Insulating Contractors, Inc., L.M. Insulating Contractors, Inc., d/b/a L.M. Insulating Contractors and Supply Company, Larry Minnifield d/b/a L.M. Insulating Contractors and Larry Minnifield d/b/a L.M. Insulation Supplies, Harrisburg, Pennsylvania, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to recognize and bargain with the International Association of Heat and Frost Insulators and Asbestos Workers Local 23, AFL–CIO as the limited exclusive collective-bargaining representative of the employees in the unit described in article XII of the agreement, by hiring employees not referred by the Union in violation of article VII; failing to make payments to the Union Health and Welfare Fund, Pension Fund, Annuity Fund and Vacation Fund as required by article X; failing to participate in the proceedings and comply with the decisions of the Trade Board pursuant to article V of the agreement; withdrawing recognition from the Union; and failing and refusing to furnish the Union with requested information that is relevant to, and necessary for, the performance of its duties as the limited exclusive representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize the Union as the limited exclusive collective-bargaining representative of the unit employees.

(b) Honor articles V, VII, and X of the agreement regarding referrals from the Union, benefit fund payments, and Trade Board proceedings.

(c) Offer immediate and full employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and make them whole for any loss of earnings and other benefits suffered by reason of the Respondent's failure to hire them, in the manner set forth in the remedy section of this decision.

(d) Make whole unit employees, and employees who would have been referred, by making all delinquent fringe benefit fund contributions owed since January 24, 1993, and reimburse all such employees for any expenses ensuing from the Respondent's failure to make the required contributions, in the manner set forth in the remedy section of this decision.

(e) Furnish the Union with the information it requested on April 28, 1993.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its facility in Harrisburg, Pennsylvania, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to recognize and bargain with the International Association of Heat and Frost Insulators and Asbestos Workers Local 23, AFL–CIO

as the limited exclusive collective-bargaining representative of the employees in the unit described in article XII of the agreement, by hiring employees not referred by the Union in violation of article VII; failing to make payments to the Union Health and Welfare Fund, Pension Fund, Annuity Fund and Vacation Fund as required by article X; failing to participate in the proceedings and comply with the decisions of the Trade Board pursuant to article V of the agreement; withdrawing recognition from the Union; and failing and refusing to furnish the Union with requested information that is relevant to, and necessary for, the performance of its duties as the limited exclusive representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize the Union as the limited exclusive collective-bargaining representative of the unit employees.

WE WILL honor articles V, VII, and X of the agreement regarding referrals from the Union, benefit fund payments, and Trade Board proceedings.

WE WILL offer immediate and full employment to those applicants who would have been referred to us for employment by the Union were it not for the our unlawful conduct, and make them whole for any loss of earnings and other benefits suffered by reason of our failure to hire them, with interest.

WE WILL make whole unit employees, and employees who would have been referred, by making all delinquent fringe benefit fund contributions owed since January 24, 1993, and reimburse all such employees for any expenses ensuing from our failure to make the required contributions, with interest.

WE WILL furnish the Union with the information it requested on April 28, 1993.

L.M. INSULATING CONTRACTORS, INC., L.M. INSULATING CONTRACTORS, INC. D/B/A L.M. INSULATING CONTRACTORS AND SUPPLY COMPANY, LARRY MINNIFIELD D/B/A L.M. INSULATING CONTRACTORS AND LARRY MINNIFIELD D/B/A L.M. INSULATION SUPPLIES